

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. VICTORIA LEE RUNNING HAWK, Defendant.	CR. 12-50137-JLV ORDER
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Defendant Victoria Running Hawk, appearing pro se, filed a motion for reduction of her sentence under the First Step Act.¹ (Docket 42). By the standing order of January 10, 2019, the Federal Public Defender for the District of South Dakota was appointed to represent all defendants who filed pro se pleadings seeking relief under the First Step Act. An Assistant Federal Public Defender filed a notice of intent to not supplement Ms. Running Hawk’s motion. (Docket 44). The government filed a response opposing Ms. Running Hawk’s motion. (Docket 46).

The court may modify an imposed term of imprisonment only when expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure. 18 U.S.C. § 3582(c)(1)(B). “Section 404 is the only provision [of the First Step Act] that applies retroactively to defendants who have already been sentenced.” United States v. Gonzalez-Oseguera, Crim. No. 06-00593, 2019

¹The First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, was signed into law on December 21, 2018, and implemented a number of reforms to the criminal justice system.

WL 1270916, at *1 (D. Haw. Mar. 19, 2019). “Section 404 permits the district courts to reduce a sentence retroactively based on the revised statutory penalties of the Fair Sentencing Act of 2010, Pub. Law 111-220; 124 Stat. 2372. See First Step Act § 404(a).” Id. “The Fair Sentencing Act of 2010 modified the statutory sentencing range only for crack cocaine offenses.” Id.

Ms. Running Hawk pled guilty to a superseding information charging her with possession “with intent to distribute, 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, a Schedule II controlled substance, all in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B).” See Dockets 23, 25 & 26. Because Ms. Running Hawk was convicted of a methamphetamine offense, she is not eligible for a reduction of her imprisonment pursuant to the First Step Act. See Gonzalez-Oseguera, 2019 WL 1270916, at *1; Jackson, 2019 WL 3936303, at *2; United States v. Herrera, CR. 02-531, 2019 WL 3428835, at *1 (C.D. Cal. July 29, 2019); United States v. Stoltz, No. 1:15-cr-10013, 2019 WL 3850542, at *1 (W.D. Tenn. Aug. 15, 2019); United States v. Jackson, No. 2:03-cr-0110, 2019 WL 3936303, at *2 (E.D. Cal. Aug. 20, 2019).

No good cause appearing, it is

ORDERED that the motion for reduction of sentence (Docket 42) is denied.

Dated December 4, 2019.

BY THE COURT:

/s/ Jeffrey L. Viken
JEFFREY L. VIKEN
CHIEF JUDGE